



REQUEST FOR PROPOSALS

BOOKING AGENT FOR ATHLETICS OFFICIALS

Date of Issue: June 15, 2010

Submittal deadline: July 13, 2010

Purpose of Request for Proposals (RFP): The Department of Parks and Recreation of the City of Durham is soliciting proposals for qualified agencies to provide officials and referees for athletic events managed by the Department.

| | |
|-----------------------|--|
| Project Manager | Tammy Brown, Recreation Manager |
| Department | Parks and Recreation |
| Mailing Address | 101 City Hall Plaza, Durham NC 27701 |
| Physical Address | 400 Cleveland St., Durham NC 27701 |
| Project Manager Phone | 919-560-4355 x 27225 |
| Project Manager Email | Tammy.Brown@durhamnc.gov |
| Project Manager Fax | 919-560-4021 |

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1. INTRODUCTION AND INSTRUCTIONS

1.1 Definitions

“City” means the City of Durham

“DPR” means the Department of Parks and Recreation of the City of Durham

“Proposal” means the response of the person, firm, or corporation proposing to provide services sought by this RFP

“Proposer” means the person, firm, or corporation that submits a response to this RFP.

“Contractor” / “Vendor” means the Proposer with which the City enters into a contract with to fulfill the terms of this RFP

1.2 Submittal timeline

| | |
|-----------------------------|--|
| RFP issued | June 15, 2010 |
| Pre-submittal conference | June 28, 2010 3:00 PM DPR office |
| Proposal submittal deadline | July 13, 2010 4:00 PM |
| Contractor selection | July 20, 2010 |
| Contract execution | August 3, 2010 |
| Implementation | August 9, 2010 |

1.3 Pre-submittal conference

There will be a pre-submittal conference on June 29, 2010, at 9:00 AM in the Department of Parks and Recreation, 400 Cleveland St., Durham, NC. Attendees should be familiar with this RFP. Attendance is not mandatory for proposal submittal.

1.4 Questions regarding the RFP

All questions should be in writing and directed to the Project Manager. Questions are due no later than the date of the pre-submittal conference. A compilation of responses will be posted on the City web site as an amendment to the RFP, if necessary, no later than seven days prior to the date of the proposal submittal deadline.

1.5 Proposal submittal and deadline

Proposers must submit 5 copies of their proposal in writing in a sealed envelope. Proposals should be double-sided and unbound. Proposals are due in the Parks and Recreation office no

later than **4:00 PM on July 13, 2010**. Delays caused by any delivery service, including the U S Postal Service, will not be grounds for an extension of the due date. Faxed and emailed proposals are not acceptable.

1.6 Format

The Proposals should be no more than 10 double-sided pages in length, exclusive of individuals' resumes, examples of work experiences, references, and the required SDBE forms included in this RFP in Appendix A (these items should be included as an attachment to the main document). Extensive colored displays and promotional materials are not necessary or desired. Emphasis should be placed on completeness and responses to the information requested in Section 3. A Proposal should clearly specify the costs of providing the services requested in this RFP.

1.7 Solicitation

This solicitation for proposals has been placed on the City's internet site at

www.durhamnc.gov/departments/purchasing/bids.cfm

Any responses to requests for information or clarification to the RFP will be posted to this site no later than July 6, 2010.

1.8 Assignment

The Contractor may not transfer or assign any portion of the contract.

2. BACKGROUND AND PURPOSE

2.1 Background information

The City of Durham DPR offers recreation activities to citizens in numerous sports, including soccer, basketball, flag football, volleyball, and softball, that require trained officials. The offerings include teams and leagues for ages 5 years through adult, for male and female participants, during several seasons each year. Organization and registration for these participants is handled by the staff of Parks and Recreation, as is the scheduling and maintenance/management of the physical facilities.

2.2 Purpose

The City of Durham DPR is seeking a Contractor or Contractors to recruit, train, supervise, and provide a sufficient number of athletic officials for its athletic contests as determined by the

Recreation Manager of the Athletics unit. The Contractor may submit a proposal to supply all of these services as described in Section 3 or any portion thereof.

2.3 Budget

DPR will pay the athletic officials for the various sports at the rates indicated in Section 3, for the number of matches/games per sport as indicated in that same section. The Proposer will add an amount as necessary to his proposal to cover his anticipated administrative costs and the cost of providing insurance for all staff assigned to work City of Durham athletic events.

3. SUBMITTAL REQUIREMENTS

Notice under the Americans with Disabilities Act: The City does not discriminate against qualified individuals with disability in the City's services, programs, or activities. The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City's programs, services, and activities. The City will make all reasonable provisions to policies and programs to ensure that persons with disabilities have an equal opportunity to enjoy all City programs, services, and activities. Anyone who requires aid or service for effective communications, or a modification of policies or procedures, should contact the office of Stacey Poston, ADA Coordinator, Voice: 919-560-4197 x 22254, TTY 919-560-1200; Stacey.poston@durhamnc.gov, as soon as possible but no later than 48 hours before a scheduled event.

3.1 Cover letter

The proposal must contain a cover letter, signed by the principal in the firm or agency, indicating his or her title and that he or she has the authority to submit the proposal on behalf of the firm or agency. The letter should contain the following statement: "The undersigned has the authority to submit this proposal on behalf of (*name of company or agency*) in response to the City of Durham RFP for providing services as a Booking Agent for Athletic Officials."

3.2 Core Requirements

DPR requires the selected Contractor to be able to provide all or some of the services below. A Proposer must make it clear in his proposal exactly which of these services he is proposing to provide.

| Sport | Total number of matches per season | Number of officials per match | Number of seasons per year |
|------------------------|------------------------------------|-------------------------------|----------------------------|
| Adult flag football | 30 | 2 | 2 |
| Adult volleyball (17+) | 109 | 1 | 1 |
| Adult softball (17+) | 715 | 2 | 2 |

| | | | |
|-------------------------|-----|---|---|
| Adult basketball (17+) | 151 | 2 | 2 |
| Adult soccer (17+) | 93 | 3 | 2 |
| Youth basketball (5-8) | 88 | 1 | 1 |
| Youth flag football | 36 | 2 | 1 |
| Youth soccer (5-12) | 30 | 2 | 1 |
| Youth basketball (9-16) | 204 | 2 | 1 |
| Teen basketball (15-18) | 55 | 2 | 1 |
| Youth soccer | 88 | 2 | 2 |

3.3 Additional features

The Proposer must also provide the following additional information as part of the proposal:

- Description of the firm's experience with similar work, including certifications and affiliations
- Current work in progress, and ability to schedule an adequate number of officials within the time periods for each sport season
- A minimum of three (3) references for past performance in this type of service
- If you are offering to provide sanctioned officials for adult softball, proof of your agency's non-profit status
- A list of all officials that your agency represents, including the sports they are qualified to officiate, the level of play in each sport that they are qualified to officiate, documentation of the training they have received, and the number of years of experience of each official in the sports he/she has been designated to officiate
- A development plan showing continuing training for officials assigned to work DPR athletic events, demonstrating attendance at regular training events by sanctioning organizations or by the agent
- Description of your firm's requirements for notification for scheduling and cancellations
- Description of your firm's disciplinary code and dress code for officials (NCHSAA standards encouraged)
- Evaluation form used by the firm to monitor and rate the performance of officials and a description of how and how often this evaluation is done.

3.4 Sanctioning information

- Any agency proposing to book officials for adult softball must be a certified non-profit organization that is sanctioned by the United States Specialty Sports Association (USSSA) and must include in its proposal the IRS determination letter indicating its 501(c)3 status and its incorporation number.
- Any agency proposing to book officials for soccer must show that those agents hold a current certification from the U. S. Soccer Federation, with a minimum badge level of

Grade 7 for work in the adult leagues and a minimum badge level of Grade 8 for work in youth soccer.

3.5 Insurance

3.5.a. The Contractor shall maintain insurance not less than the following:

Commercial General Liability, covering

- premises/operations;
- products/completed operations;
- broad form property damage;
- contractual liability;
- independent contractors, if any are used in the performance of this contract;
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement);
- combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$3,000,000 per year.

Workers' Compensation Insurance, covering,

- statutory benefits;
- covering employees; covering owners partners, officers, and relatives (who work on this contract)
- employers' liability coverage, with limits of not less than \$1,000,000 for bodily injury or occupational disease claims.

This policy/coverage shall contain a waiver of subrogation in favor of the City.

Insurance shall be provided by:

- companies authorized to do business in the State of North Carolina
- companies with Best rating of A- or A-VII

Insurance shall be evidenced by a certificate:

- providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- certificates shall be addressed to:
City of Durham, North Carolina
Attention: Finance Director
101 City Hall Plaza
Durham, NC 27701

- both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract.

3.5.b. The selected booking agency or firm will be required to furnish general liability insurance and accident insurance for all officials assigned to City of Durham events.

3.6 Cost Proposal

The Proposer's cost proposals are for one full year of service, beginning with the anticipated implementation date of August 9, 2010, and must include an itemized list of direct and indirect costs associated with the performance of the requested services. The City will compensate the booking agency for documented costs associated with providing the insurance coverage requested in Section 3.5.b.

DPR is proposing to pay athletic event officials at a rate of no more than the following fees per match:

| Sport | Officials' rate of pay per match |
|-------------------------|---|
| Adult volleyball (17+) | \$25 |
| Adult softball (17+) * | \$21 |
| Adult basketball (17+) | \$21 |
| Adult soccer (17+) | \$45 |
| Youth basketball (5-8) | \$17 |
| Youth basketball (9-16) | \$21 |
| Youth soccer (5-16) | \$17 |

DPR is proposing to pay an agency booking fee at a rate of no more than the following:

| Sport | Booking fee per league per season |
|-------------------------|--|
| Adult volleyball (17+) | \$100 |
| Adult softball (17+) * | \$2,800 |
| Adult basketball (17+) | \$800 |
| Adult soccer (17+) | \$1,200 |
| Youth basketball (5-8) | \$150 |
| Youth basketball (9-16) | \$1,050 |
| Youth soccer (5-16) | \$600 |

3.7 Company experience and references

Please provide a description of the Proposer's agency or firm's background and three (3) references.

3.8 Equal Business Opportunity Program

It is the policy of the City to provide equal opportunities for City contracting for small firms owned by socially and economically disadvantaged persons doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct present effects of past discrimination and to resolve complaints of discrimination.

While there are no SDBE participation goals for this project, in accordance with the Ordinance, all contractors are required to provide information requested in the "SDBE Professional Services Forms" package (Appendix A). Proposals that do not contain the appropriate, completed "Professional Services Forms" may be deemed non-responsive and ineligible for consideration. The "Declaration of Performance," "Participation Documentation," Managerial Profile," "Equal Employment Opportunity Statement" and the "Employee Breakdown" documents are required of all contractors. In lieu of "Employee Breakdown," contractors may submit a copy of the current EEO-1 form (corporate basis).

The Department of Equal Opportunity/Equity Assurance is responsible for the Equal Business Opportunity Program. All questions about "SDBE Professional Services Forms" should be referred to Deborah Giles or other department staff at (919) 560-4180.

3.9 Non-collusion

This RFP constitutes and invitation to bid or propose. Include and sign the following with your proposal submittal:

The City of Durham prohibits collusion, which is defined as a secret agreement for a deceitful or fraudulent purpose.

I, (name), affirm that I have not engaged in collusion with any City employee(s), other person, corporations, or firms relating to this bid, proposal, or quotation. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

Signature _____

4. CONDITIONS

4.1 Discretion of the City

The City reserves the right to reject any or all proposals. Notwithstanding anything to the contrary in this document or in any addenda to this document, unless the provision refers specifically to this topic, the City reserves the right to negotiate changes of any nature with any firm or agency proposing to do the work with respect to any term or condition in this document and in any proposal.

4.2 City of Durham business license and other requirements

All firms doing business with the City are required to obtain a City of Durham business privilege license, if applicable, before entering into a contractual agreement with the City (call 560-4700 to obtain a license). A firm or agency that has not worked with the City before will be required to provide a W-9 federal tax form.

4.3 City not responsible for preparation costs

The City is not responsible for any costs associated with preparation or submittal of the proposal.

4.4 Disclosure of proposal contents

All proposals and other material submitted become the property of the City. All information, including detailed cost information, will be held in confidence during the evaluation process and before the contract award. Thereafter, proposals will become public information.

4.5 Limit on claims

No Proposer will have any claims or rights against the City for participating in the Proposal process. The only rights and claims any Proposer will have against the City arising out of participating in the Proposal process will be in the Contract with the selected Proposer(s).

4.6 Contract negotiations

After completion of the evaluation, including any discussions held with responders during the evaluation, the City may elect to initiate contract negotiations. The option of whether or not to initiate contract negotiations rests solely with the City. If the City elects to initiate contract negotiations, these negotiations will not involve changes which would, by their nature, affect the proposal selection previously conducted.

4.7 Failure to negotiate

The City may terminate negotiations with the Contractor initially selected and commence negotiations with the next highest ranked responder if the selected Contractor does any of the following:

- a. fails to provide requested information to negotiate in a timely manner;
- b. fails to negotiate in good faith;
- c. indicates that he/she cannot perform the contract within the budgeted funds available for the service; or
- d. if, after good faith efforts, the City and the Contractor cannot come to terms.

5. EVALUATION OF PROPOSALS

5.1 Evaluation method

DPR will use an evaluation committee to score all proposals. The evaluation will be based on the following:

- a. understanding of the project objectives and deliverables
- b. ability to fulfill the requirements of the services requested
- c. cost
- d. experience, qualifications, and references

5.2 Point scoring method

- a. Understanding of the project objectives (25%)
Does the proposal demonstrate an understanding of the services that DPR is requesting? Have all requirements raised in Section 3.2, 3.3, and 3.4 been clearly addressed?
- b. Ability to fulfill the requirements (25%)
How well does the proposal match the City's needs? Is the proposer able to handle potential changes as the year progresses?
- c. Cost (25%)
How well does the proposal meet the City's budgetary requirements? How reasonable are the proposer's cost estimates for services and additional features? Are the cost estimates documented?
- d. Experience, qualifications, and references (25%)
Does the proposer have experience in providing similar services? Has the proposer provided references? Does the proposer have a successful history of providing similar services?

Appendix A: SDBE Professional Services Forms

Appendix B: City of Durham Sample Contract



CITY OF DURHAM SMALL DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

PROFESSIONAL SERVICES FORMS

Revised 06/08



Mailing Address:

101 City Hall Plaza
Durham, North Carolina 27701
Phone: 919-560-4180
Facsimile: 919-560-4513

Street Address:

302 East Pettigrew Street, C-180
Durham, North Carolina 27701

The Department of Equal Opportunity/Equity Assurance
Good Things Are Happening In Durham

CITY OF DURHAM EQUAL BUSINESS OPPORTUNITY PROGRAM

Policy Statement

It is the policy of the City to provide equal opportunities for City contracting to small firms owned by socially and economically disadvantaged persons doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct the present effects of past discrimination and to resolve complaints of discrimination.

Goals

To increase the dollar value of all City contracts for goods and services awarded to small disadvantaged business enterprises, it is a desire of the City that the contractor will voluntarily undertake efforts to increase the participation of socially and economically disadvantaged individuals at higher skill and responsibility levels within non-minority firms engaged in contracting and subcontracting with the City.

The Equal Opportunity/Equity Assurance Director shall establish project specific goals for each project or contract based upon the availability of small disadvantaged business enterprises (SDBE's) within the defined scope of work, delineated into percentages of the total value of the work.

Equal Business Opportunity Ordinance SDBE Participation Documentation

If applicable information is not submitted with your proposal, your proposal will be deemed non-responsive.

Declaration of Performance must be completed and submitted with your proposal.

SDBE Participation Documentation must be used to document participation of Small Disadvantaged Business Enterprise (SDBE) on Professional Services projects. All SDBEs must be certified by the City of Durham's Equal Opportunity/Equity Assurance Department prior to submission date. If a business listed has not been certified, the amount of participation will be reduced from the total utilization.

Managerial Profile must be used to list the managerial persons in your workforce who will be participating in this project.

Equal Employment Opportunity Statement for your company must be completed and submitted with your proposal.

Employee Breakdown must be completed and submitted for the location providing the service/commodity. If the parent company will be involved in providing the service/commodity on the City contract, a consolidated employment breakdown must be submitted.

DECLARATION OF PERFORMANCE BY CONSULTANT/CONTRACTOR

Briefly address each of the following items:

1. A brief synopsis of the company and the products/services it provides:
2. Describe the normal procedure used on a bid of this type, giving the flow of purchase from the company to the ultimate purchaser:
3. List anyone outside of your company with whom you will contract on this bid:

The undersigned consultant/contractor certifies that: (check appropriate box)

- a) _____ It is the normal business practice of the consultant/contractor to perform all elements of the contract with its own workforce without the use of subcontractors/vendors; and
- b) _____ That the above documentation demonstrates this *firm's* capabilities to perform all elements of the contract with its own work force or without the use of subcontractors/vendors.
- c) _____ The vendor/contractor will use a subconsultant(s) in the fulfillment of this scope of work.

Date

Authorized Signature

PARTICIPATION DOCUMENTATION
(TO BE COMPLETED BY PRIME CONSULTANT/CONTRACTOR ONLY)

**Names of all firms
 Project (including
 prime and
 subconsultants/sub-
 contractors)**

Location

**SDBE
 Firm
 Yes/No**

**Nature
 of
 Participation**

**% of Project
 Work**

| | | | | |
|--|--|--|--|--|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

TOTAL _____

Name - Authorized Officer of Prime Consultant/Contractor Firm (Print/Type)

Signature - Authorized Officer of Prime Consultant/Contractor Firm

Date

Managerial Profile

Name of Firm: _____

Contact Person: _____

Title: _____

Address: _____

Telephone No.: _____

Date: _____

List the managerial persons in your work force who will be participating in this project, including name, position, and whether the individuals are minority or woman within the definition* of the City of Durham's Equal Business Opportunity Ordinance.

Managerial Employees

| NAME | POSITION | SOCIALLY/ECONOMICALLY DISADVANTAGED* (YES/NO) |
|-------|----------|---|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

* M-Minority(African American) W-Woman Other-H-Hispanic, AI-American Indian, AS-Asian American, Handicapped

EQUAL EMPLOYMENT OPPORTUNITY STATEMENT
(You may submit your organization's EEO policy in lieu of this sheet)

EMPLOYEE BREAKDOWN

Part A – Employee statistics for the primary location.

| | | | | M— a —l— e —s | | | | | F— e —m— a —l— e —s | | | | |
|---------------------|-----------------|-------------|---------------|---------------|-------|----------|---------------------------|--------------------------|---------------------|-------|----------|---------------------------|--------------------------|
| Employment category | Total employees | Total males | Total females | White | Black | Hispanic | Asian or Pacific Islander | Indian or Alaskan Native | White | Black | Hispanic | Asian or Pacific Islander | Indian or Alaskan Native |
| Project manager | | | | | | | | | | | | | |
| Professional | | | | | | | | | | | | | |
| Technical | | | | | | | | | | | | | |
| Clerical | | | | | | | | | | | | | |
| Labor | | | | | | | | | | | | | |
| Totals | | | | | | | | | | | | | |

Part B – Employee statistics for the consolidated company. *(See instructions for this form on whether this part is required.)*

| | | | | M— a —l— e —s | | | | | F— e —m— a —l— e —s | | | | |
|---------------------|-----------------|-------------|---------------|---------------|-------|----------|---------------------------|--------------------------|---------------------|-------|----------|---------------------------|--------------------------|
| Employment category | Total employees | Total males | Total females | White | Black | Hispanic | Asian or Pacific Islander | Indian or Alaskan Native | White | Black | Hispanic | Asian or Pacific Islander | Indian or Alaskan Native |
| Project manager | | | | | | | | | | | | | |
| Professional | | | | | | | | | | | | | |
| Technical | | | | | | | | | | | | | |
| Clerical | | | | | | | | | | | | | |
| Labor | | | | | | | | | | | | | |
| Totals | | | | | | | | | | | | | |

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

CONTRACT FOR XXXXXXXXX

This contract is made and entered into as of the _____ day of _____, 2009, by the City of Durham ("City" or "Owner") and XXXXXX, Inc. ("Contractor"), a corporation organized and existing under the laws of the state of North Carolina.

Sec. 1. Background and Purpose. The Contractor was chosen by the City after publication of a Request for Proposals and evaluation of the bids received. The project for which services are to be provided is (*description of services*).

Sec. 2. Scope of Services to be Performed.

The Contractor shall provide the tasks described in **Attachment A**, which are hereafter referred to as the "Work," completed to the specifications of the published bid documents.

The schedule for the performance of the Work shall be as follows:

| | |
|--------|------|
| Task 1 | Date |
| Task 2 | Date |
| Task 3 | Date |
| Task 4 | Date |
| Task 5 | Date |
| Task 6 | Date |

Sec. 3. City's Responsibilities. The Contractor may rely upon the following responsibilities being fulfilled or supplied by the City (DPR) or its representative:

- *Descriptions of relevant services to be provided by the City*

The City is responsible for fulfilling these responsibilities on time, according to the project schedule. Should the City fulfill these responsibilities substantially on time, with Contractor's performance not being delayed in fact by the City's performance, the City shall be considered to have complied with this contract term.

The City is responsible for approving, in writing (*whatever is to be provided*) before the final product will be authorized. Such written approval by the City constitutes the City's acceptance of liability for damages or errors arising from the content of the approved work..

Sec. 4. Complete Work without Extra Cost. Except to the extent specifically authorized in Sec 5, Compensation, the City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation unless previously authorized by the City.

Sec. 5. Compensation. The City shall pay the Contractor for completion of the Work as set forth below. The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section. If costs and/or delivery dates change because the City or its representatives have not provided timely feedback or because the City changes the agreed-upon scope of work, the Contractor will inform the City about these changes and will obtain approval before continuation. Payment for each portion of the project shall be as shown on **Attachment B**.

Sec. 6. Contractor's Billings to City. The Contractor shall send invoices to the City according to the following schedule:

Contractor may invoice as desired for portion(s) of the task(s) completed. A reasonable and documentable amount of additional charges and expenses may be billed with completed and accepted change orders.

Each invoice shall document in detail the Work performed, the dates performed, the person(s) performing the Work, and such other information as may be reasonably requested by the City. Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice. If there are questions regarding the amount, adequacy, or quality of the Work, whether the Work was actually performed, and/or whether the Work performed conformed to the requirements of this contract the City may withhold the amount of such payments as appears to be in question, pending resolution.

Sec. 7. Insurance. Contractor shall obtain and keep in force, during this Contract, such Insurance as is specified by the City. Contractor shall maintain insurance not less than the following:

Commercial General Liability, covering

- premises/operations
- products/completed operations
- broad form property damage
- explosion, collapse, and underground hazards if the hazards exist in the performance of this contract
- contractual liability
- independent contractors, if any are used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- combined single limit not less than \$1,000,000 per occurrence

Workers' Compensation Insurance, covering

- statutory benefits;
- covering employees; covering owners, partners, officers, and relatives (who work on this contract)
- employers' liability, \$1,000,000.

Insurance shall be provided by:

- companies authorized to do business in the State of North Carolina
- companies with Best rating of A or better.

Insurance shall be evidenced by a certificate:

- providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- certificates shall be addressed to:
City of Durham, North Carolina
attention: Finance Director
101 City Hall Plaza
Durham, NC 27701
- both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract.

Sec. 8. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule referred to in Section 5 above, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 9. Attachments. The following attachments detailing the scope of service and the costs for the material and services that constitute the Work are made a part of this contract:

Attachment A "Scope of Services to be Performed" containing x pages
Attachment B "Compensation" containing y pages.

Sec. 10. (a) Notice. All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:

Assistant Director, Park Planning
Department of Parks and Recreation
101 City Hall Plaza
Durham, NC 27701
The fax number is (919) 560-4021

To the Contractor:

Contractor contact information.

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 11. Indemnification.

(a) *Hold Harmless.* To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or his subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

(b) *Definitions.* As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules or orders--including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent Contractors, agents, and employees, excluding the Contractor.

(c) *Other Provisions Separate.* Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.

(d) *Survival.* This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

(e) *Limitations of the Contractor's Obligation.* If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 12. Miscellaneous

(a) *Choice of Law and Forum.* This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

(b) *Waiver.* No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) *Performance of Government Functions.* Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) *Severability.* If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) *Assignment. Subcontractors. Successors and Assigns.* Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) *Compliance with Law.* In performing all of the Work, the Contractor shall comply with all applicable law.

(g) *City Policy.* THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) *EEO Provisions.* During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor state

that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor's ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions shall be binding upon such sub-Contractors and vendors.

(i) *SDBE*. The Contractor shall comply with all applicable provisions of Chapter 26 of the Durham City Code (the Equal Business Opportunity ordinance, as amended from time to time. The failure of the Contractor to comply with that chapter shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that chapter, this contract, and State law. The final version of all SDBE documents and information submitted by the Contractor and approved by the City of Durham are a legal and binding part of this contract.

(j) *No Third Party Rights Created*. This contract is intended for the benefit of the City and the Contractor and not any other person.

(k) *Principles of Interpretation and Definitions*. In this contract, unless the context requires otherwise: (1) the singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this contract. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day.

(l) *Modifications. Entire Agreement*. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a deputy or assistant City Manager signs it for the City. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

Sec. 13. Termination or Suspension. To the extent, if any, that the City has the power to suspend or terminate this contract or the Contractor's services under this

contract, that power may be exercised by the City Manager or a deputy or assistant City Manager without City Council action. If the contract is terminated, the City will pay for work completed prior to the termination, plus approved and documentable additional charges. If the contract is suspended for a period longer than six months and is subsequently reactivated, the Contractor and the City shall, prior to reactivation, agree upon a lump sum or basis of reimbursement to the Contractor for any extra costs occasioned as a result of the work's having been suspended.

Sec. 14. Ownership of Documents. All reports, maps, and other deliverables prepared pursuant to this Agreement shall be owned by the City of Durham. Grant of any license is conditioned on receipt of full payment to the Contractor by the City. All deliverables shall be delivered to City upon final payment made to Contractor. In case of modification or reuse of the Contract Documents by the City, the Contractor's name shall be removed from the documents, and the Contractor shall not be liable to the City or third parties for their modification or reuse. After thirty (30) days past the completion of the project or termination of the contract, the City will be responsible for any costs incurred by the Contractor to retrieve artwork, electronic files, or other documents associated with the project at the City's request. The Contractor retains the right to use the work products for promotional and educational purposes.

Sec. 15. Conflict of Interest. Contractor agrees that it has no interest and shall acquire no interest, direct or indirect, that would conflict in any manner with the performance of the services hereunder. Contractor further agrees that, in the performance of this Agreement, no person having any such interest shall be employed.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

City's Finance Officer

Date

ATTEST:

CITY OF DURHAM

City Clerk

By _____
City Manager

**NORTH CAROLINA
DURHAM COUNTY**

ACKNOWLEDGMENT BY CITY OF DURHAM

I, _____, a notary public in and for said county
and state, certify that _____
personally appeared before me this day and acknowledged that she is _____ City
Clerk of the City of Durham, a municipal corporation, and that by authority duly given
and as the act of the City, the foregoing contract was signed in its corporate name by its
_____ City Manager, sealed with its corporate seal, and attested by herself as its said
City Clerk or Deputy City Clerk.

This the _____ day of _____, 20_____

My commission expires:

Notary Public

ATTEST:

Contractor

Secretary
(Affix corporate seal here.)

By _____
President

STATE OF _____

CORPORATION ACKNOWLEDGMENT

COUNTY OF _____

Contract for X Service between Service Provider, Inc.
and the City of Durham, Date, Year

I, _____, a notary public in and for said county and state,
certify that _____ personally appeared before
me this day and acknowledged that he or she is _____ Secretary of
_____, a corporation, and that by authority duly
given and as the act of the corporation, the foregoing contract with the City of Durham was
signed in its name by its _____ President, whose name is
_____, sealed with its
corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary.

This the _____ day of _____, 20_____

My commission expires:

Notary Public

This instrument has been pre-audited in the manner required by the Local Government
Budget and Fiscal Control Act.